IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 7802 of 2004

Between:

Asanzubi Franzaan Investors Wefare Association, Redg.No. 3091/99,
Hyderabad, rep. by its President Mohd. Yousuf Raza,
S/o Shaik Mehbood, aged 60 yrs.,
Heenakhana,Golconda, Hyderabad **..... PETITIONER**

AND

1 The Additional Director General of Police, C.I.D., Andhra Pradesh ,
Hyderabad.

2 The Inspector of Police, E.O.W., C.I.D., Hyderabad

3 Senior Executive Officer, C.I.D. Hyderabad

4 Syed Ahsan, s/o.not known.

5 Zubeda Begum, W/o Syed Ahsan,

6 Syed Hadi Ahmed, S/o Syed Ahsa,

7 Syed Farooq Ahmed, S/o Syed Ahsan,

8 Syed Anwar Ahmed, S/o Ahsan,

9 Syed Mnijah Ahmed, S/o Syed Ahsan,

10 Syed Azher Ahmed, S/o Syed Ahsan,

4 to 10 are r/o.3-5-594, Vittalwadi , Himayatnagar, Hyderabad.
…**RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondent No.2 in not Prosecuting the Respondents Nos.4 to 10 herein in Crime No.31/2002 P.S. C.I.D., Hyderabad, in spite of their involvement in the above Crime being the Chairman and Directors / Office bearers of the Asanzubi Franzaan Company, as illegal, arbitrary, null and void and consequently direct the Respondent No.2 to prosecute the Respondents 4 to 10 herein in Crime No.31 of 2002, P.S.C.I.D . Hyderabad under section 420, 409, 120-B and Section 5 of Act 17 of 1999, and complete the Investigation as early as possible.

Counsel for the Petitioner: MR.MOHD.ZIA-UL-HAQ

Counsel for the Respondent Nos.1 to 3: GP FOR HOME

Counsel for the Respondent Nos.4 to 7: Mr.L.Ravichander.

Counsel for the Respondent Nos. 8 to 10 : None appeared.

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No.7802 of 2004

O R D E R :

Heard Sri Mohd.Zia-Ul-Haque, learned counsel appearing for the petitioner and the Government Pleader for Home for the respondents 1 to 3 herein and Sri L.Ravichander, learned counsel appearing on behalf of the respondents 4 to 7.

The petitioner, which is a welfare association of investors, filed this Writ petition, *inter alia* seeking for a writ of Mandamus declaring the inaction on the part of the respondents 1 to 3 herein in prosecuting the other respondents viz. the respondents 4 to 10, in the

proceedings which have been already registered as Crime No.31 of 2002 of C.I.D. police station, Hyderabad.

The case of the petitioner is that apart from the Managing Director, the respondents 4 to 10 are directly connected with the management and the affairs of the institution in respect of which serious allegations have been made and further, these respondents 4 to 10 are no other than the close relatives of the Chairman and Managing Director, who have joined hands in all such illegal activities. As a result of which, many of the investors are put to greater hardship and loss apart from being cheated. Hence, on a complaint, the case was registered as crime no.31 of 2002 in C.I.D. police station, Hyderabad. According to the petitioner, the respondents 1 to 3 herein have conducted investigation and ultimately filed charge sheet only as against the Managing Director, but not against the respondents 4 to 10, who are also liable both criminally and otherwise, and can not escape from any such illegal action nor there is any excuse for such exclusion. Having regard to the activities of the respondents 4 to 10 along with the Managing Director in floating various concerns involving substantial financial implications, which shall be consisting of funds of third parties like the members of the petitioner association herein, the provisions of the A.P. Protection of Depositors of Financial Establishments Act and Rules, 1989 (Act 17 of 1999) are squarely applicable and every one of them including every one concerned with all such institutions as pointed out in the charge sheet itself by name which are in all 10 in number, ought to have been prosecuted by the respondents 1 to 3 herein. However, the prosecution is now restricted to the Managing Director. Hence, this Writ Petition.

Repelling the contentions, it is the contention of the Government Pleader appearing for Home that though the complaint is against all, having regard to the ultimate analysis arrived at after due investigation, the charge sheet is filed only against the Managing

Director and therefore, the petitioner has no right as such to invoke the Article 226 of the Constitution of India to seek such directions.

Learned counsel appearing for the petitioner sought to place reliance on Section 5 of the aforesaid Act 17 of 1999, which contemplates that in the event of any default committed by financial establishment, every person responsible for the management of the affairs of the financial establishment including the promoter, manager or member of the financial establishment shall be liable for punishment with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees, apart from such establishment being liable for fine. Therefore, it is his contention that the respondents 4 to 10 ought to have been prosecuted therefor.

Considering the submissions made and also on perusal of the material, it is seen that there is no dispute with regard to the fact that the petitioner has filed a complaint in pursuance of which the aforesaid crime was registered and ultimately charge sheet has been laid only as against the Chairman and Managing Director, but not against the respondents 4 to 10. No doubt, *prima facie*, under Section 10 of the aforesaid Act, every one is directly liable for all such defaults committed by the financial establishments. However, the fact remains that after investigation, the charge sheet has already been laid and there is no bar or any impediment coming against the petitioner for launching independent prosecution by filing a private complaint directly into the competent court, which can be taken into consideration afresh and prosecution can as well be proceeded against the respondents 4 to 10. However, it is not open for this Court, in exercise of powers under Article 226 of the Constitution of India, to give any such direction to an investigating agency.

Having regard to such remedy available, which is more than

efficacious, I do not find any merits in the above Writ Petition. Accordingly, the Writ Petition is dismissed. No costs.

However, it shall be open for the petitioner to file a fresh complaint directly in the competent court as against the respondents 4 to 10 which can be enquired into and disposed of on merits in accordance with law after regular enquiry along with the case, which has already been registered as against the Managing Director in Crime No.31 of 2002 of C.I.D. police station, Hyderabad.

.09.2004

DRK

Copy to:

1)The Addl.Director General of Police, CID, A.P., Hyderabad.

2)The Inspector of Police, EOW, CID, Hyderabad.

3)The Senior Executive Officer, CID, Hyderabad.

4)Two CCs to the G.P. for Home, High Court of A.P., High Court bldgs., Hyderabad (o.u.t.)

5)Two CD copies.